Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Price Cap Performance Review for Local Exchange Carriers	)	**CC Docket No. 94-1**
	)	

OPPOSITION TO PETITIONS FOR RECONSIDERATION

Introduction

Rochester Telephone Corp. ("Rochester") submits this opposition to the petitions for reconsideration filed by AT&T Corp. ("AT&T") and MCI Telecommunications Corporation ("MCI"). Rochester will confine this opposition to three issues: (1) sharing; (2) exogenous costs; and (3) the common line formula.[1]

First, petitioners' suggestions that the Commission improperly offered exchange carriers a "no-sharing" option[2] are incorrect. The Commission properly decided that the availability of a no-sharing option enhances the efficiency goals of price cap regulation.[3] In addition, the removal of sharing is perfectly consistent with Section 201 of the Communications Act.

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1 Although Rochester is not addressing each and every issue raised by petitioners, it believes that none of the issues raised warrant reconsideration.

2 MCI at 9-14.

3 *Price Cap Performance Review for Local Exchange Carriers*, CC Dkt. 94-1, First Report and Order, FCC 95-132, ¶ 193 (April 7, 1995) ("Price Cap Order").

Second, petitioners present no valid basis, not already considered and rejected by the Commission, for further tinkering with the definition of exogenous costs. At bottom, petitioners want the Commission to define exogenous costs in a manner that can only adversely affect exchange carriers. Adoption of such a one-sided scheme would be arbitrary. The Commission should decline to adopt the proposals suggested by petitioners.

Third, the claims that the Commission should have immediately adopted a per-line common line formula[4] lack merit. The Commission did not so clearly hold that exchange carriers cannot affect common line demand that immediate adoption of a per-line formula was required. Moreover, the selection of a particular common line formula is intertwined with any decision to utilize a total factor productivity mechanism. The Commission deferred consideration of the latter issue; it could properly defer consideration of the former issue as well.

Argument

I. THE COMMISSION PROPERLY OFFERED A "NO-SHARING" OPTION.

MCI's assertion that the Commission failed to explain why it chose to offer a no-sharing option[5] is patently incorrect. The remaining arguments that elimination of sharing

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[4] AT&T at 10-13; MCI at 19-21.

[5] MCI at 10-11.

is somehow unlawful[6] are wrong. They afford no basis for the Commission to reconsider this decision.

The Commission correctly recognized that sharing dilutes the efficiency incentives of a price cap regime. As the Commission held:

> We believe that the record developed in this proceeding shows that the sharing mechanism deprives LECs and their customers of the full benefits of lower prices and improved efficiency that a pure price cap scheme can offer.[7]

The record fully supports that conclusion. Sharing undeniably dilutes the efficiency-inducing incentives of a price cap plan. Because exchange carriers only keep a portion of any efficiency gains that they achieve, they have less incentive to act efficiently than they would under a pure price cap regime. MCI simply adds nothing to the record that the Commission has not already considered and rejected.

Its further claim that, absent sharing, exchange carriers' rates will rise to unreasonable levels[8] is completely misplaced. MCI ignores the mechanics of price cap regulation. Under price caps, rates cannot rise above the price cap. Moreover, the productivity offset -- of whatever level chosen -- guarantees that rates decrease in real terms each year that a price cap plan is in effect. MCI directs its challenge, not to the

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6 MCI at 10-11.

7 Price Cap Order, ¶ 191.

8 MCI at 12-13.

existence of a no-sharing option, but to price cap regulation itself. The Commission, however, answered that question over four years ago.[9]

The final assertion, that a price cap plan with a no-sharing option is unlawful under section 201 of the Communications Act,[10] also misses the mark. Rate-of-return regulation is one option available to the Commission.[11] However, it is not the only means by which the Commission may exercise its authority to ensure that rates are just and reasonable.[12] The Commission has, for example, adopted a price cap plan for AT&T that does not include sharing.[13]

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9 *Policy and Rules Concerning Rates for Dominant Carriers*, CC Dkt. 87-313, Second Report and Order, 5 FCC Rcd. 6786 (1990).

10 MCI at 13-14.

11 *Nader v. FCC*, 520 F.2d 182 (D.C. Cir. 1975).

12 Price Cap Order, ¶ 225.

13 *Id.*

AT&T, like exchange carriers, is subject to section 201 of the Communications Act. If sharing is mandatory for exchange carriers, as MCI suggests, then it is equally mandatory for AT&T. MCI has never suggested that AT&T be so regulated. Indeed, AT&T itself does not suggest that the no-sharing option is impermissible as a matter of law.

AT&T does ask that the Commission confirm that exchange carriers electing the no-sharing option are still subject to sharing for the last seven months of the current tariff year. AT&T at 7-8. The rules, however are not as clear as AT&T portrays. For this reason, a number of exchange carriers -- including Rochester -- have asked for clarification or for a waiver to enable them to elect the 5.3% productivity offset as of January 1, 1995, with the understanding that they will not be subject to a sharing obligation for calendar year 1995. The Commission should grant these petitions.

Petitioners raise no new arguments regarding the no-sharing option that the Commission has not already fully considered and rejected. Reconsideration of this issue is unwarranted.

II. THE COMMISSION SHOULD DECLINE TO REVISE ITS TREATMENT OF EXOGENOUS COSTS AS SUGGESTED BY PETITIONERS.

Except for those categories of cost changes that are specifically delineated in the rules as exogenous, the Commission has decided to treat as exogenous only those changes that affect "economic" costs, *i.e.*, that have an effect on cash flow which is not otherwise captured by the price cap formula.[14] On reconsideration, petitioners seek further tinkering with these rules.

AT&T raises, yet again, its contention that the expiration of the equal access and network reconfiguration amortization should be treated as exogenous.[15] AT&T raises no new arguments that would justify reconsideration. The Commission's price cap rules have treated all equal access costs as presumptively *endogenous*. It would be grossly unfair -- particularly for the Tier 2 price cap carriers -- for the Commission to treat the expiration of this amortization as exogenous, while requiring that all other equal access costs be treated as endogenous. For companies such as several of Rochester's Tier 2 affiliates, equal access conversion costs still represent a significant cost of doing business. While

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[14] Price Cap Order, ¶¶ 293-94.

[15] AT&T at 13-18.

Rochester has no objection to equal access being treated as a cost of doing business, the Commission should treat all equal access costs similarly. AT&T only want those events that benefit it to be treated exogenously. Such an approach would be arbitrary at best.

Moreover, adoption of AT&T's proposal would be entirely inconsistent with the Commission's decision to treat only "economic" cost changes as exogenous.[16] The expiration of this particular amortization is no different in principle than the implementation of Statement of Financial Accounting Standard 106. Both are accounting adjustments that may or may not have an effect on cash flow. If the latter does not qualify for exogenous treatment, neither does the former. AT&T's selective picking and choosing does not merit reconsideration.

For its part, MCI wants exogenous cost changes limited solely to separations and related changes that affect jurisdictional separations.[17] The Commission neither adopted nor rejected MCI's proposal; it deferred consideration of it until it issues its Further Notice in this proceeding.[18] In any event, MCI presents an unduly narrow view of the types of costs that should qualify for exogenous treatment. If certain cost changes are beyond the control of exchange carriers and are not reflected in the price cap formula, those cost

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[16] Rochester does not agree that only changes in "economic" costs should be recognized as exogenous. Nonetheless, if the Commission adheres to this standard, it cannot treat as exogenous only those cost changes that would cause rates to decrease, while ignoring other comparable changes that would have the opposite effect.

[17] MCI at 21-22.

[18] Price Cap Order, ¶ 303.

changes logically should qualify for exogenous treatment, yet would be excluded under MCI's approach. For this reason alone, the Commission should decline, on reconsideration, to adopt MCI's suggestion.[19]

III. THE COMMISSION SHOULD DECLINE TO ADOPT A PER-LINE COMMON LINE FORMULA.

MCI and AT&T seek to relitigate the Commission's decision not to adopt, for its interim plan, a per-line common line formula.[20] The Commission neither accepted nor rejected this claim; it deferred its decision until issuance of the Further Notice.[21] Nonetheless, the Commission appropriately declined to modify the balanced 50-50 common line formula for the interim plan.

Contrary to AT&T's and MCI's characterizations, the Commission did not conclude that exchange carriers have no influence on common line demand. The Commission's *tentative* conclusion was far more cautious:

> The foregoing conclusions *suggest* that it is not necessary to create price cap incentives for LECs to increase growth in

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19 MCI also requests that the Commission adopt an additional exogenous cost adjustment in the case of sales or swaps of exchanges to require an exogenous adjustment to the price cap carriers' indices to account for changes in universal service fund support that such sales or swaps occasion. MCI at 22-23. There is no reason to adopt this proposal. As the Commission notes, it already requires a price cap index adjustment to account for revenue requirement changes resulting from sales or swaps of exchanges. Price Cap Order, ¶ 330. Any additional adjustment is unnecessary and, as the Commission has also concluded, it should not discourage transactions that have "identifiable public interest benefits." *Id.*, ¶ 333.

20 AT&T at 10-13; MCI at 19-21.

21 Price Cap Order, ¶¶ 271-73.

> common line usage, because they have *little* influence over such growth.[22]

That is far too cautious an assessment upon which to base a change, for the interim plan, in the existing common line formula and the Commission correctly declined to do so.[23]

In addition, as the Commission correctly observes,[24] the issue of the appropriate common line formula is intertwined with the choice of a methodology governing a permanent productivity offset. To the extent that the Commission adopts a total factor productivity approach to developing a productivity offset, it may become unnecessary to include a demand-cap in the common line formula. The Commission appropriately deferred this issue for future consideration.

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22 *Id.*, ¶ 269 (emphasis added).

23 In addition, the Commission correctly observed that a number of countervailing factors -- "excessive rate churn and confusion" (*id.*, ¶ 272) -- militate against a change in the common line formula at this time.

24 *Id.*, ¶ 275.

Conclusion

For the foregoing reasons, the Commission should dismiss the petitions for reconsideration.

Respectfully submitted,

Michael J. Shortley, III

Attorney for Rochester
Telephone Corp.

180 South Clinton Avenue
Rochester, New York 14646
(716) 777-1028

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Certificate of Service

I hereby certify that, on this 28th day of June, 1995, copies of the foregooing Opposition to Petitions for Reconsideration were served by first-class mail, postage prepaid, upon the parties on the attached service list.

Michael J. Shortley, III

SERVICE LIST

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Mary McDermott
United States Telephone AssociationVice
President and General Counsel
1401 H Street, N. W., Suite 600
Washington, D.C. 20005

James S. Blaszak
Francis E. Fletcher, Jr.
Susan H. R. Jones
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900 - East Tower
Washington, D. C. 20005

R. Michael Senkowski
Jeffrey s. Linder
Ilene T. Weinreich
Wiley, Rein & Fielding
1776 K Street, N. W.
Washington, D.C. 20006

Jay C. Keithley
Leon M. Kestenbaum
H. Richard Juhnke
Norina T. Moy
Sprint Corporation
1850 M Street, N.W., 11th Floor
Washington, D.C. 20036

Philip F. McClelland
Assistant Consumer Advocate
Commonwealth of Pennsylvania
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

Robert M. Lynch
Richard C. Hartgrove
Thomas A. Pajda
Southwestern Bell Telephone company
One Bell Center, Room 3520
St. Louis, Missouri 63101

Michael S. Pabian
Ameritech
2000 L Street, N. W., Suite 512
Washington, D.C. 20036

Allan J. Arlow
President and Executive Officer
Computer and Communications Industry
Association
666 11th Street, N.W.
Washington, D.C. 20001

Charles A. Zielinski
Rogers & Wells
607 14th Street, N.W.
Washington, D.C. 20005

Michael E. Glover
Edward D. Shakin
Karen Zacharia
The Bell Atlantic Telephone Companies
1710 H Street, N. W., 8th Floor
Washington, D.C. 20006

Thomas E. Taylor
Christopher J. Wilson
Frost & Jacobs
2500 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202

Anne U. MacClintock
Vice President - Regulatory Affairs and Public
Policy
227 Church Street
New Haven, CT 06510

W. Theodore Pierson, Jr.
Pierson & Tuttle
1200 Nineteenth Street, N.W., Suite 607
Washington, D.C. 20036

Andrew D. Lipman
Russell M. Blau
Swidler & Berlin, chartered
3000 K Street, N. W.
Washington, D.C. 20007

Genevieve Morelli
Vice President and General Counsel
Competitive Telecommunications Association
1140 Connecticut Avenue, N. W., Suite 220
Washington, D. C. 20036

Danny E. Adams
Jeffrey S. Linder
Wiley, Rein & Fielding
1776 K Street, N. W.
Washington, D.C. 20006

Robert A. Mazer
Nixon, Hargrave, Devans & Doyle
One Thomas circle, N.W., Suite 800
Washington, D.C. 20005

James Gattuso
Beverly McKittrick
Citizens for a Sound Economy Foundation
1250 H Street, N. W.
Washington, D.C. 20005

Robert S. Tongren
David C. Bergmann
Yvonne T. Ranft
Office of the Consumers' Counsel, State of Ohio
77 South High Street - 15th Floor
Columbus, Ohio 43266-0550

David Cosson
2626 Pennsylvania Avenue, N.W.
National Telephone Cooperative Association
Washington, D.C. 20037

Emily C. Hewitt
Vincent L. Crivella
General Services Administration
18th and F Streets, N.W., Room 4002
Washington, D.C. 20405

David R. Poe
Cherie R. Kiser
LeBoeuf, Lamb, Greene & MacRae
1875 Connecticut Avenue, N.W.
Washington, D.C. 20009-5728

Peter A. Rohrbach
Linda L. Oliver
Hogan & Hartson
Columbia Square
555 13th Street, N.W.
Washington, D.C. 20004-1109

Henry M. Rivera
Ginsburg, Feldman and Bress, chartered
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Lisa M. Zaina
OPATSCO
21 Dupont Circle, N.W., Suite 700
Washington, D.C. 20036

James T. Hannon
Sharon L. Naylor
U.S. West Communications, Inc.
1020 19th Street, N. W., Suite 700
Washington, D. C. 20036

Gary M. Epstein
James H. Barker
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

M. Robert Sutherland
Richard M. Sbaratta
BellSouth Telecommunications, Inc.
4300 Southern Bell Center
675 West Peachtree Street, N. E.
Atlanta, Georgia 30375

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.,
Washington, D.C. 2036

Elizabeth Dickerson
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N. W.
Washington, D.C. 20006

Edward R. Wholl
Campbell L. Ayling
Edward E. Niehoff
The NYNEX Telephone companies
120 Bloomingdale Road
White Plains, New York 10605

John C. Smith
Aeronautical Radio, Inc.
2551 Riva Road
Annapolis, MD 21401

J. Manning Lee
Teleport communications Group Inc.
One Teleport Drive
State Island, NY 10311

Margot Smiley Humphrey
Koteen & Naftlin
1150 Connecticut Avenue, N.W., Suite 1000
Washington, D.C. 20036

Mark C. Rosenblum
Robert J. McKee
Peter H. Jacoby
Albert M. Lewis
AT&T Corp.
295 North Maple Avenue, Room 2255F2
Basking Ridge, New Jersey 07920

Marc E. Manly
AT&T Corp.
1722 Eye Street, N.W.
Washington, D.C. 20006

Jonathan E. Canis
Swidler & Berlin, Chartered
3000 K Street, N.W. - Suite 300
Washington, D.C. 20007

James P. Tuthill
John W. Bogy
140 New Montgomery Street, Room 1530-A
San Francisco, CA 94105

James L. Wurtz
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

William E. Kennard
General Counsel
Federal Communcations Commission
1919 M Street, N.W.
Washington, D.C. 20554